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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

**ENERGY RESERVES GROUP, INC., et al.,**

*Petitioners,*

v.

**JAMES B. EDWARDS, SECRETARY OF ENERGY, et al.,**

*Respondents.*

**On Petition For A Writ Of Certiorari To The Temporary Emergency Court Of Appeals Of The United States**

## BRIEF OF THE STATE OF ILLINOIS AS AMICUS CURIAE IN OPPOSITION TO PETITION FOR CERTIORARI

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**JAMES B. EDWARDS, SECRETARY OF ENERGY, et al.,**

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## STATEMENT OF INTEREST OF THE STATE OF ILLINOIS

The State of Illinois, the fourth largest consumer in the nation of refined petroleum products, has a significant interest in the outcome of this litigation. Exclusion of injection wells from the stripper well exemption is consistent with the congressional intent that the exemption should be "narrowly defined and prudently administered."

*Energy Reserves Group, Inc. v. Dep't of Energy*, No. 10-39, 13 (TECA July 29, 1982) (hereinafter "*Energy Reserves II*"). This ensures that Illinois purchasers are not overcharged for crude oil or refined products which originated from domestic crude oil obtained by the use of injection wells.

Under the doctrine of *parens patriae*, the State of Illinois may take legal action to protect the interest of citizens who are unable to act on their own behalf. *See, Hawaii v. Standard Oil Co. of California*, 405 U.S. 251, 258 (1972). The Attorney General is the chief law enforcement officer of the State of Illinois and is entrusted with the constitutional duty to represent the interests of its citizens in litigation which may affect those interests. *See, E.P.A v. Pollution Control Bd.*, 69 Ill.2d 394, 372 N.E.2d 50 (1977); *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485, 359 N.E.2d 149 (1976). Moreover, in an antitrust action against major oil companies the court held that the Attorney General of Florida has the common law powers to represent state citizens, but in addition, in the absence of express legislative restrictions to the contrary, has the power to ". . . institute, defend, or intervene in any litigation . . . which he determines in his sound official discretion involves a legal matter of compelling public interest." *Florida v. Exxon Corp.*, 526 F.2d 266, 271 (5th Cir. 1976), *quoting State ex rel. Shevin v. Yarborough*, 257 So.2d 891, 894 (Fla. 1972).

In addition, the State of Illinois has an interest in the outcome of this litigation because Illinois is a potential recipient of unclaimed funds from the trust fund under court supervision. The United States Department of Energy ("DOE") has recently begun to recognize state governments as the appropriate recipient of unclaimed funds from oil overcharge cases. *See*, Standard Oil Company of

California Consent Order, Case No. RCVA-00001, July 27, 1981, ($25 million); Sohio, Inc., Consent Order, Case No. RSOA-00001, November 2, 1982, ($10 million); and *Office of Enforcement*, 9 DOE ¶82,520 (1982) ("*Alkek*"), *Office of Enforcement*, 9 DOE ¶82,553 (1982) ("*Adams*"), and Office of Special Counsel, Case No. BFF-0007, (August 9, 1982) (Proposed Decision) ("*Amoco*") (*Alkek*, *Adams*, and *Amoco* have been consolidated, amount not yet determined).

DOE has a restitutionary duty to identify overcharged purchasers and reimburse them from the restitutionary funds. *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717 (TECA 1982). If DOE is unable to determine the purchasers overcharged, state governments are the appropriate institutions for distribution because they can provide a direct benefit to injured purchasers by utilizing unclaimed funds in energy related programs. DOE's Office of Hearings and Appeals has stated that "they [states] would be able to design a distribution scheme for the refund proceeds which would benefit all injured consumers in each state, and account for the varying energy-related needs of their citizens." *Alkek*, *supra*, at 6.

For these reasons, the State of Illinois submits this amicus brief in opposition to the petition for certiorari.

## REASONS FOR DENYING THE WRIT

### I.

### PETITIONER IS COLLATERALLY ESTOPPED FROM RAISING THE ISSUE OF WHETHER AN ADMINISTRATIVE AGENCY'S CONSTRUCTION OF A STATUTE IS ENTITLED TO JUDICIAL DEFERENCE.

Petitioners in the first question presented raise the issue of "whether an administrative agency's construction of a statute is entitled to judicial deference . . .". Petition for Certiorari of Energy Reserves Group, Inc. at i, (hereinafter "Petition").

Under the doctrine of collateral estoppel, petitioners are estopped from raising an issue in which there was a final adjudication between the same parties in a prior proceeding. *Hoag v. State of New Jersey*, 356 U.S. 464, 470 (1958). In *Energy Reserves Group, Inc. v. Dep't of Energy*, 589 F.2d 1082, 1092 (TECA 1978) (hereinafter "*Energy Reserves I*"), the first decision of the Temporary Emergency Court of Appeals ("TECA") between the parties, the court held that:

> (1) Ruling 1974-29 was deemed by FEA to be interpretative. While this characterization by FEA is not controlling, *its interpretation of its statutory mandate is entitled to judicial deference under persuasive authorities and prior rulings of this Court.* (emphasis added) *Southern Union Production Company v. FEA, supra*, 569 F.2d 1147, l.c. 1152 upholding a similar ruling interpreting the statutory stripper well exemption and the stripper well regulation; *Marathon Oil Co. v. FEA* (Em. App. 1976) 547 F.2d 1140, *cert. denied*, 430 U.S. 983, 97 S.Ct. 1679, 52 L.Ed. 2d 378 (1977).

Petitioners did not appeal *Energy Reserves I*. Therefore, the issue of judicial deference with regard to the Federal

Energy Administration's ("FEA") construction of the stripper well exemption is final.

Yet, petitioners attempt to raise this issue before this Court. This Court has held that it lacks jurisdiction to reconsider issues between parties which were "finally disposed of by the decree of the Circuit Court of Appeals . . .". *Farmers' & Mechanics' Nat. Bank v. Wilkinson*, 266 U.S. 503, 506 (1925). Therefore, petitioners are estopped under the doctrine of collateral estoppel from raising the issue of whether FEA had judicial deference since the issue was finally disposed of in *Energy Reserves I.*

## II.

## THE ISSUES ARE NOT SUFFICIENTLY IMPORTANT TO WARRANT THIS COURT'S ATTENTION.

Petitioners and the amicus oil-producing States of Texas, Oklahoma, and Wyoming petition this Court to determine the issue of whether "'injection wells' may be excluded from the calculation of 'average daily production' in applying the statutory exemption from price controls for crude oil produced from properties whose 'average daily production . . . does not exceed ten barrels per well.'" Petition at i. This case presents a question of statutory construction that is not one which requires the exercise of this Court's extraordinary and discretionary jurisdiction because: 1) there is no conflict between the Courts of Appeals; 2) this case should not be accepted for monetary reasons alone; and 3) the argument of the States of Texas, Oklahoma, and Wyoming that State conservation practices will be affected is moot because the crude oil regulations have been abolished.

First, there is no conflict between the Courts of Appeals on the question presented. In *Wiggins Brothers, Inc.*

*v. Dep't of Energy*, 667 F.2d 77 (TECA 1981), *cert. denied*, 102 S.Ct. 1749 (1982) (hereinafter "*Wiggins*"), the TECA decided a case very similar to this one. In *Wiggins*, the issue was whether injection wells may be counted as "wells that produced oil" under the Marginal Property Rule. The court concluded "that injection wells may not be counted as 'wells that produced oil' in the application of the Marginal Property Rule." *Id.* at 87.

In *Southern Union Production Co. v. FEA*, 569 F.2d 1147 (TECA 1978) (hereinafter "*Southern Union*"), the TECA decided another case similar to this case. One of the issues before the TECA was whether "FEA has acted in excess of its authority, and arbitrarily and capriciously, in excluding gas well condensate from the stripper exemption mandated by the Allocation Act" (citations omitted). *Id.* at 1148. In a per curiam decision by a panel consisting of Judges Christensen, Jameson, and Grant, the court held that "the FEA has not acted arbitrarily or capriciously in denying the exemption to gas well condensate, but rather is making a reasonable, concerted effort to accomplish the purposes intended by Congress." *Id.* at 1152.

In addition, the TECA has held that FEA Ruling 1975-12, which interpreted the stipper well exemption provided in successive statutes and regulations, "was and is a valid interpretative rule entitled to deference by the courts." *Energy Consumers and Producers, Ass'n, Inc. v. Dep't of Energy*, 632 F.2d 129 (TECA 1980), *cert. denied*, 499 U.S. 832 (1980) (hereinafter "*Energy Consumers*").

The decision by the Court of Appeals follows the doctrine already established in *Wiggins*, *Southern Union*, and *Energy Consumers*. These decisions indicate that the TECA has been consistent and correct in deciding cases involving the statutory construction of the stripper

well exemption. Review by this Court is, therefore, unnecessary.

Second, this Court should not accept a case involving statutory construction simply because a large amount of money is at stake for the petroleum industry. In *Commissioner v. Standard Life & Accident Ins. Co.*, 433 U.S. 148, 151, n.5 (1977) ("substantially more than $100 million is in dispute"), this Court granted certiorari because the "Courts of Appeals have taken varying approaches to this problem." *Id.* at 151. In *United States v. Zazove*, 334 U.S. 602, 613-614, n.17 (1978) (billions of dollars), this Court granted certiorari "to review the important question of statutory construction involved." *Id.* at 605.

Third, the States of Texas, Oklahoma, and Wyoming contend that the decision of the TECA will harm state regulatory schemes which encourage conservation practices. The State of Texas argues that "the decision of the TECA frustrates the State's conservation policies by encouraging earlier shutdown due to economic inviability, thereby promoting waste of this vital natural resource." *See*, Amicus Curiae Brief of the State of Texas at 3. This issue is moot because on January 28, 1981, President Reagan signed Executive Order 12287 which deregulated the remaining crude oil regulations, including the stripper well exemption. In addition, the oil-producing states did not cite any evidence presented before the District Court that oil-producers could not afford to use these wells because injection wells were not exempt from price controls. Furthermore, the existing law had a procedure by which the producer could obtain an exemption for secondary recovery, including injection wells. *Energy Reserves II, supra*, at 23-24.

## III.

## THE DECISION BELOW GAVE FULL CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

Petitioners and amicus State of Texas attempt to create the illusion that the TECA failed to consider the proper issues; therefore, petitioners were denied their day in court. The issues decided by the TECA were "whether the district court has correctly construed congressional intent; whether Ruling 1974-29 exceeds the authority of the DOE; and whether Ruling 1979-29 is arbitrary and capricious." *Energy Reserves II, supra,* at 10. These were the issues that the TECA left unresolved after deciding *Energy Reserves I.* Application of these issues to Ruling 1979-29 was crucial because it was the "cornerstone" of the FEA's interpretation of its stripper well exemption regulation. After an exhaustive review of the legislative history of the Trans-Alaska Pipeline Authorization Act, 87 Stat. 590 (1973) and the Emergency Petroleum Allocation Act of 1973, 87 Stat. 628 (1973), the TECA found that Congress intended the stripper well exemption to be limited in order to prevent any "gerrymandering." *Energy Reserves II, supra,* at 25-26. Therefore, the FEA's exclusion of injection wells was "within the scope of congressional intent and agency authority." *Id.* at 26. Moreover, the TECA determined that the FEA's interpretation is neither arbitrary nor capricious because to decide otherwise "would constitute a flagrant disregard of a clear and contrary congressional intention." *Id.* at 35. Therefore, petitioners did receive their day in court because the TECA in *Energy Reserves II* properly defined and decided the issues before it.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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